

SHB 2307 - H AMD 604

By Representative Kochmar

WITHDRAWN 02/04/2016

1 Strike everything after the enacting clause and insert the
2 following:

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4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44
5 RCW to read as follows:

6 (1) An employer must provide reasonable accommodations to an
7 employee for a pregnancy-related or childbirth-related health
8 condition if she so requests, with written certification from her
9 licensed health care provider, unless the employer demonstrates that
10 the accommodation would impose an undue hardship on the operation of
11 the employer's business. The employee must provide written notice to
12 the employer stating that a health condition related to pregnancy or
13 childbirth requires accommodation.

14 (2) Notwithstanding subsection (1) of this section, an employee
15 who is pregnant or has a health condition related to pregnancy or
16 childbirth shall not be required to obtain the advice of her
17 licensed health care provider, nor may an employer claim undue
18 hardship, for the following accommodations: (a) More frequent,
19 longer, or flexible restroom, food, and water breaks; (b) seating;
20 and (c) limits on lifting over twenty pounds.

21 (3) The employee and employer shall engage in an interactive
22 process with respect to an employee's request for a reasonable
23 accommodation. To assist in this process, the department shall post
24 information in a printable format, such as a brochure, explaining
25 the respective rights and responsibilities of the employer and the
26 employee who has a health condition related to pregnancy or
27 childbirth. Additionally, the department shall include information

1 in the "Your Rights as a Worker" poster, or similar required
2 workplace poster, regarding these respective rights and
3 responsibilities.

4 (4) Notwithstanding any other provision of this section, an
5 employer shall not be required to create a new or additional
6 position in order to accommodate an employee pursuant to this
7 section, and shall not be required to discharge any employee,
8 transfer any other employee with greater seniority, or promote any
9 employee.

10 (5) An employer shall not require an employee who has a
11 pregnancy-related or childbirth-related health condition to accept
12 an accommodation, if such accommodation is unnecessary to enable the
13 employee to perform her job.

14 (6) An employer shall not:

15 (a) Take adverse action against an employee who requests or uses
16 an accommodation under this section that affects the terms,
17 conditions, or privileges of employment;

18 (b) Deny employment opportunities to an otherwise qualified
19 employee if such denial is based on the employer's need to make
20 reasonable accommodation required by this section; or

21 (c) Require an employee to take leave if another reasonable
22 accommodation can be provided for the employee's pregnancy-related
23 or childbirth-related health condition.

24 (7) Upon complaint by an employee, the director shall
25 investigate to determine if there has been compliance with this
26 section and the rules adopted under this section. If the
27 investigation indicates that a violation may have occurred, a
28 hearing must be held in accordance with chapter 34.05 RCW. The
29 director must issue a written determination including his or her
30 findings after the hearing. A judicial appeal from the director's
31 determination may be taken in accordance with chapter 34.05 RCW,
32 with the prevailing party entitled to recover reasonable costs and
33 attorneys' fees.

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1 (8) This section does not preempt, limit, diminish, or otherwise
2 affect any other provision of law relating to sex discrimination or
3 pregnancy, or in any way diminish or limit the coverage for
4 pregnancy, childbirth, or a pregnancy-related health condition.

5 (9) The definitions in this subsection apply throughout this
6 section unless the context clearly requires otherwise.

7 (a) "Department" means the department of labor and industries.

8 (b) "Director" means the director of labor and industries.

9 (c) "Employee" means an individual employed by an employer.

10 (d) "Employer" means a person engaged in an industry who has
11 fifteen or more employees for each working day in each of twenty or
12 more calendar weeks in the current or preceding calendar year,
13 except that this section does not apply to an entity that is exempt
14 from federal taxation under U.S.C. Title 26, section 501(c).

15 (e) "Reasonable accommodation" means:

16 (i) Making existing facilities used by employees readily
17 accessible to and usable by employees who have a pregnancy-related
18 or childbirth-related disability;

19 (ii) Job restructuring, part-time or modified work schedules,
20 reassignment to a vacant position, acquisition or modification of
21 equipment or devices, appropriate adjustment or modifications of
22 examinations;

23 (iii) Temporary transfer to a less strenuous or hazardous
24 position; and

25 (iv) Limits on heavy lifting.

26 (f) "Undue hardship" means an action requiring significant
27 difficulty or expense, when considered in light of the following
28 factors:

29 (i) The nature and cost of the accommodation needed;

30 (ii) The overall financial resources of the facility or
31 facilities involved in the provision of the reasonable
32 accommodation; the number of persons employed by the employer; the
33 effect on expenses and resources; or the impact otherwise of such
34 accommodation upon the employer;

1 (iii) The overall financial resources of the employer; the
2 overall size of the business, including the number of employees; and
3 the number, type, and location of its facilities; and

4 (iv) The type of operation or operations of the employer,
5 including the composition, structure, and functions of the workforce
6 of such employer, the geographic separateness, and administrative or
7 fiscal relationship of the facility or facilities in question to the
8 employer."

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10 Correct the title.

EFFECT:

Strikes the underlying bill and replaces it with the following:

(1) Requires an employer to provide reasonable accommodations to an employee for pregnancy-related or childbirth-related health conditions, if the employee requests and has written certification from her health care provider, unless the employer shows that the accommodation would impose an undue hardship;

(2) Provides that written certification from a health care provider is not required and the employer may not claim undue hardship for accommodations on: restroom, food, or water breaks; seating; and limits on lifting over 20 pounds;

(3) Requires the employer and employee to engage in an interactive process regarding the request for reasonable accommodation;

(4) Applies to employers who have 15 or more employees and exempts tax-exempt nonprofit entities;

(5) Requires the Department of Labor and Industries (Department) to investigate complaints and requires the Department to post information explaining employers' and employees' rights and responsibilities;

(6) Defines "reasonable accommodation" and "undue hardship" and other terms;

(7) Prohibits an employer from engaging in certain acts (such as requiring an employee to accept an accommodation and taking adverse action against an employee) that are very similar to the underlying bill.

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